

REMARKS

In response to Office Action mailed May 29, 2008, the Applicant amends claim 20. Claims 1-19 and 35-60 have been canceled. Accordingly, claims 20-34 remain pending in the Application.

I. Information Disclosure Statement

The Applicants have resubmitted the Information Disclosure Statement filed October 1, 2004 correcting the issues identified by the Examiner. Entry and reconsideration is requested.

II. Claims Rejected under 35 U.S.C. § 112

Claims 20-34 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention.

The Applicants have amended claim 20 to replace the term “the instrument” with “the apparatus,” which has antecedent basis in the claim. Accordingly, reconsideration and withdrawal of the indefiniteness rejection of claims 20-34 are requested.

III. Claims Rejected under 35 U.S.C. § 103

Claims 20-34 stand rejected under 35 U.S.C. § 103 as allegedly unpatentable over U.S. Patent Publication No. 2002/0060669 by Sze (herein after “Sze”).

To establish a *prima facie* case of obviousness, the Examiner must show that the cited reference teaches or suggests each of the elements of a claim. In regard to claim 20,

this claim includes the elements of “wherein all light received by the apparatus for 3D imaging and any light emitted by the apparatus for 3D imaging passes through a physical terminus of the apparatus at which point a maximum separation between any two light rays used for 3D imaging does not exceed 2 inches.” The Examiner acknowledges that Sze does not explicitly teach the separation of light rays not exceeding 2 inches. See Office action at page 3. The Examiner cites paragraph [0029] and argues that “[i]t would have been obvious to one of ordinary skill in the art to recognize that 12mm does not exceed 2 inches as well as the tip of the stylus would no (*sic*) exceed 2 inches. Thus the separation between any two light [rays] received and emitted from stylus does not exceed 2 inches.” See pages 3 and 4 of the Office action. The section of paragraph [0029] relating to the distance of 12mm states that “region of interest may be considered to be a zone that ranges from the vertical plane of virtual input device 100 upward for perhaps 12 mm or so.” Thus, a key or similar area of the virtual input device includes an area 12 mm above the surface it is projected upon. This doesn’t have any direct impact on the distance between light rays that pass through the physical terminus of an imaging apparatus. The maximum spacing of the relevant 3D imaging rays (i.e., those rays that are emitted by a light source, reflect off the target and return to the imaging sensor array) is most directly affected by the spacing of the light source from the lens or imaging array. These aspects are illustrated in Fig. 1 of Sze. However, Sze does not provide any information about the scale of the illustrated components of Fig. 1 and does not otherwise provide any description about the distance between the light source 20 and lens 60 in Fig. 1 of Sze. Thus, Sze cannot be said to teach or suggest that these light rays would not exceed a 2 inch distance. Therefore, the Examiner has not established that Sze teaches or suggests each of the elements of claim 20.

Accordingly, reconsideration and withdrawal of the obviousness rejection of claim 20 are requested.

In regard to claims 21-34, these claims depend from claim 20 and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to claim 20, these claims are not obvious over Sze. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

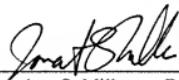
Conclusion

In view of the foregoing, it is believed that all claims now pending are now in condition for allowance and such action is earnestly solicited at the earliest possible date. If there are any additional fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. Questions regarding this matter should be directed to the undersigned at (310) 207-3800.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

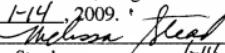
Dated: 1/14, 2009


Jonathan S. Miller Reg. No. 48,534

1279 Oakmead Parkway
Sunnyvale, CA 94085-4040
(310) 207-3800

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this paper is being transmitted online via EFS Web to the Patent and Trademark Office, Commissioner for Patents, Post Office Box 1450, Alexandria, Virginia 22313-1450, on

1/14, 2009.

Melissa Stead 1/14, 2009